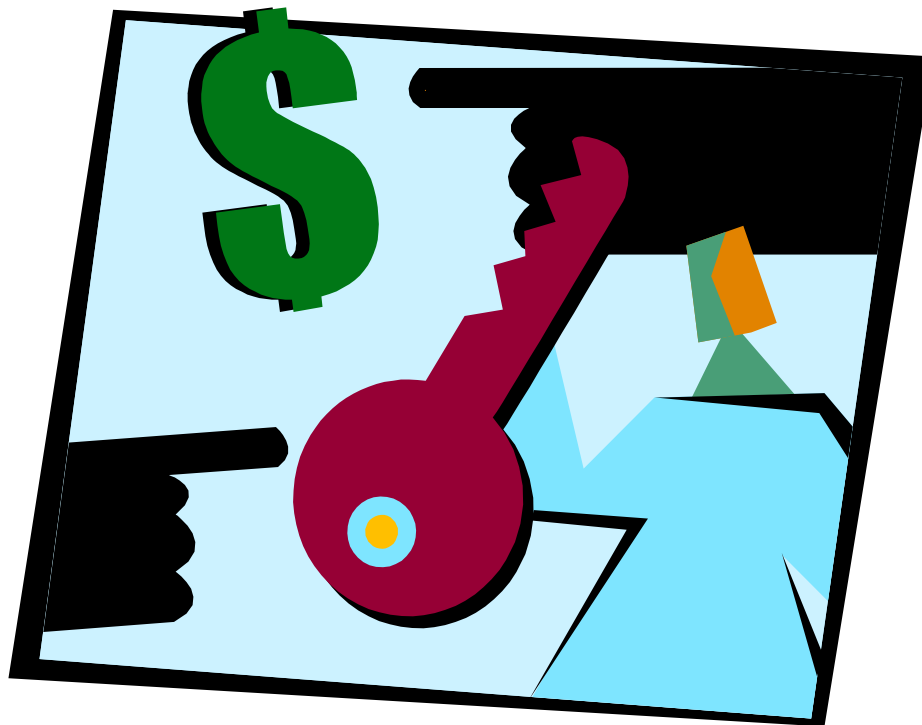




# Contribution Agreements Handbook



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## **Part 610 – Contribution Agreements**

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## **Part 610 – Contribution Agreements**

### **Subpart A – General Information**

#### **610.0 Introduction**

**A. Use**

This handbook provides guidance to employees who use contribution agreements to support the mission of the Natural Resources Conservation Service (NRCS) and to help them determine the appropriate legal instrument to use. Its use is designed for anyone who has a role in processing agreements.

**B. Contribution Agreements under 7 U.S.C. 6962a**

In 2000, Congress provided that NRCS may enter into another type of relationship entirely different from those required by the Federal Grant and Cooperative Agreement Act of 1977 as amended. This relationship was initially authorized under Section 714 of the 2001 Appropriation Act, Public Law 106-387. The authority for this relationship is now codified at 7 U.S.C. 6962a.

The Law provides that NRCS can non-competitively enter into agreements with any party that will serve a mutual interest of the parties in carrying out NRCS programs; with both parties contributing resources to carry out the program activity. It does not provide for financial assistance. The contributions of the parties are utilized to carry out the common activity. The agreements are similar to those of business partnerships where neither partner contributes to the other, but rather they both contribute to the common enterprise.

Contribution Agreements can be used to assist activities of all NRCS administered programs.

#### **610.1 Authority: Federal Statutory Authorities**

Subpart H, Exhibits, Section 610.90, lists the Federal statutory authorities of NRCS to enter into contribution agreements.

#### **610.2 Definitions**

**A. Applicant**

An applicant is a State, political subdivision, or agency thereof, a public or private agency, organization, Tribal government, or any other person that submits an application for an NRCS contribution agreement.

**B. Application**

An application is a written request for an NRCS contribution agreement. See Subpart H, Exhibits, Section 610.93.

**C. Technical Assistance**

Technical assistance funds can be used to expedite or expand technical services already being provided by NRCS. Technical assistance includes activities such as: planning, design, layout, and installation of conservation practices, planning assistance; application assistance; program management; contract development and project support; quality

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assurance and evaluation; resource surveys, studies and analyses; communications and relations; training; technology development, transfer, and maintenance; administrative support; and management and supervision.

### D. Responsible Official

The Responsible Official is a program manager, or other person responsible for development of project requirements, and for pre-award and post-award administration of contributions agreements in accordance with 7 U.S.C. 6962a. The Responsible Official must certify with signature, the technical adequacy of the contribution agreement's plan, justification statement, program authority, funding source, and technical approvals during the administration of the contribution agreement, and that ethics issues have been appropriately addressed.

**Conflict of Interest, Confidentiality, and Financial Disclosure.** An employee who serves as a Responsible Official shall file a financial disclosure report. (See General Manual Title 110, Part 405, Ethics.) A Responsible Official also shall sign a Conflict of Interest and Confidentiality Statement (exhibit 610.97) before commencing responsibilities as a Responsible Official.

### E. Signatory Official

A Signatory Official has **final** authority such as the Chief and others identified in the Delegations of Authority in General Manual 130, Part 400, to obligate the Government. For contribution agreements, this cannot be re-delegated below the level of the State Conservationist. When exceptions are authorized to the 50 percent contribution requirement, signatory authority may not be re-delegated below the level of the State Conservationist.

### F. Grants and Agreements Specialist

The Grants and Agreements Specialist shall provide support, including evaluating, negotiating, and administering grants and agreements.

### G. Non-Cash Contribution

The applicant's non-cash contribution may be from the sources described as follows:

(1) An applicant's non-cash contribution is the expense the applicant organization incurs in lieu of cash for its share of direct and indirect costs associated with the project, such as employee salaries, overhead, travel, equipment, supplies, and so forth (allowable costs). These do not include in-kind contributions from third parties, non-federal organizations, or volunteer labor.

(2) In-kind contributions are also non-cash contributions; however, they are from third parties that the applicant receives that will be used in the project, such as volunteer labor, donated materials, and equipment, where the applicant incurs no expense. In-kind contributions do not include indirect costs. In-kind contributions are considered part of the applicant's 50 percent share and, therefore, are not reimbursable.

## 610.3 General Discussion

### A. Secretary of Agriculture

Congress provides the statutory authority to the Secretary of Agriculture that is the basis by which agencies are authorized to carry out any specific program. The Secretary must

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then delegate the authority to a specific agency head before the agency may implement any program. Additionally, Congress must also provide funding to carry out the program. If funding is not provided, an agency may not use funds that have been appropriated for one program to carry out another program.

### B. Authority

Every Federal Agency has the inherent authority to contract for the goods and services it needs, provided the procurement is within the Agency's mission and is not prohibited by statute (see Subpart H, Exhibits, Section 610.90.) The language provided by 7 U.S.C. 6962a reads as follows:

“Notwithstanding any other provision of law (including provisions of law requiring competition), the Secretary of Agriculture may on or after October 28, 2000, enter into cooperative agreements (which may provide for the acquisition of goods, or services, including personal services) with a State, political subdivision, or agency thereof, a public or private agency, organization, or any other person, if the Secretary determines that the objectives of the agreement will: (1) Serve a mutual interest of the parties to the agreement in carrying out the programs administered by the Natural Resources Conservation Service; and (2) All parties will contribute resources to the accomplishment of these objectives: Provided, that Commodity Credit Corporation funds obligated for such purposes shall not exceed the level obligated by the Commodity Credit Corporation for such purposes in fiscal year 1998.”

### C. Specific Elements

NRCS deems it appropriate to use certain provisions as shown in Subpart H, Exhibits, Section 610.92, Special Provisions.

### D. Legal Language

Contribution agreements must not include language that agrees to indemnify, defend, or hold harmless the participant, its agent or employees from or against any or all losses, damages, liabilities, claims or judgments resulting from, related to, or arising from the instrument.

## **Part 610 – Contribution Agreements**

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## **Part 610 – Contribution Agreements**

### **Subpart B – Applications Evaluation**

#### **610.20 Responsibility of Applicant**

##### **Responsibility**

The applicant is solely responsible for completing the contribution agreement form shown in Subpart H, Exhibits, Section 610.93. It is the mutual responsibility of the participants to complete contribution agreement documentation. This includes, but is not limited to, the following information:

- (1) Determine and describe the mutual interest of the parties in carrying out the program administered by NRCS.
- (2) Describe in detail the substantial resources to be contributed by each party.
- (3) Develop a detailed Plan of Work.
- (4) Include a proposed budget inclusive of a minimum of 50 percent toward the cost of accomplishing the objective of the agreement. In cases where there are more than two parties to the agreement, all parties will contribute equal shares. Non-Federal contributions may be through a direct outlay of funds and/or through non-cash contributions.

#### **610.21 Screening Initial Applications**

##### **A. Eliminating Applications**

Initial applications screening may be beneficial to the agency by eliminating applications that do not meet the terms of the program authority. Unacceptable proposals will be promptly returned to applicants with appropriate explanation. Review of applications will be initially performed by the appropriate Program Manager.

##### **B. Unacceptable Applications**

Unacceptable applications include, but are not limited to, the following examples:

- (1) The application does not fall within the provision of the NRCS statute under which a contribution agreement may be issued.
- (2) The application is obviously deficient and could not be remotely considered for award, such as a three-line narrative project proposal with no budget or obviously lacking 50 percent contribution to the mutual objective.

#### **610.22 Evaluating and Maintaining Contribution Agreement Applications**

##### **A. Application Evaluation**

Evaluate all applications received based on ranking or evaluation criteria established by each State. Ranking is an optional function. Some criteria to consider may be the following:

(1) Amount and type of contribution. For example, the applicant may offer more than the required 50 percent. Another consideration may be whether the State believes cash rather than non-cash is a more valuable contribution.

(2) The quality of the proposal or plan of work is exceptional.

(3) There is experience in the program area.

(4) The application contains unique and innovative methods or concepts.

(5) The application has significant potential for contribution to the Agency's mission, and it falls within the Agency's legislative and program authorities.

**B. Maintaining Documentation**

Documentation concerning ranking (should a State choose to use it) should be maintained in the NRCS official files.

**C. Evaluating Unsolicited Applications**

If there are multiple proposals, the Responsible Official will determine the method by which the application will be evaluated. The application will be subject to ranking procedures established by each State.

## **610.23 Negotiating Contribution Agreements**

**A. Negotiations**

Negotiating with the applicants whose applications have been determined acceptable for potential award is the next step.

**B. Negotiation Purposes**

The purposes of technical and administrative negotiation of contribution agreements include:

(1) Ensuring that the proposal is technically correct and complete.

(2) Reaching an understanding on administrative requirements and procedures.

(3) Ensuring full understanding of the roles, responsibilities, procedures, and requirements to be defined in the agreement.

## **610.24 Statutory Authority, Appropriations, and Conflicts of Interest**

**A. Statutory Authority**

The Responsible Official must check the statutory program authority to enter into a contribution agreement. See applicable statutes for additional information regarding NRCS Statutory Authority in Subpart H, Exhibits, Section 610.90, of this handbook. If the proposed project does not meet the statutory and program requirements, a contribution agreement cannot be properly awarded. Cite the statutory program authority for the agreement in addition to 7 U.S.C. 6962a.

**B. Appropriations**

The Responsible Official must consider these three (3) areas when analyzing appropriations:

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- (1) Look at the type of appropriations with which the contribution agreement should be funded. Appropriations designated for specific use are available only for certain types of activities (e.g., use research funds only for research activities). When in doubt of the use of specific funds, seek clarification from the NRCS Budget Officer.
- (2) Obtain written certification that funds are available from other entities involved in the agreement.
- (3) Determine the type of appropriation for expenditure of funds. (Some appropriations may be used only expenses incurred during a definite period of time.

### C. Conflicts-of-Interest

Employees involved with contribution agreements shall ensure that they do not have conflicting interests. In addition, Responsible Officials and other employees responsible for contribution agreements must be alert to possible conflicts of interests or the appearance of conflicts of interest by the applicant or any personnel the applicant has proposed to use. Consult General Manual Title 110, Part 405, Ethics, and get specific guidance from the NRCS Ethics Office when a question arises.

#### (1) NRCS Employees

- (i) The Responsible Official must file a financial disclosure report.
- (ii) An employee with a conflicting interest or the appearance of a conflicting interest must excuse himself or herself, and not be substantively involved in the consideration, award, or administration of an agreement. Affiliations that require an employee to disqualify include, but are not limited to one or more of the following:
  - The employee is affiliated with the non-Federal organization as an officer or member of the board, or as a committee or subcommittee chairperson.
  - The employee's spouse or business partner is an officer, employee, consultant, or representative of the non-Federal organization.
  - The employee currently works for, or has an arrangement for future employment or is negotiating to work for, the non-Federal organization;
  - The employee has a contract e.g., an easement with the non-Federal organization.
  - In some circumstances, a relative is involved with the non-Federal organization or the employee recently departed employment with the non-Federal organization.
- (iii) All agreements involving the exchange of NRCS personnel or funds, or where NRCS will designate an employee to serve as liaison to the organization, shall include the mandatory ethics clause for agreements provided in General Manual Title 110, Part 405.
- (iv) A Liaison Designation Form shall be issued by the Signatory Official and signed by the employee before the agreement is signed. The form shall be issued to any employee authorized to participate in the activities of the non-Federal recipient in his or her official capacity where an ongoing relationship will exist between the employee and the non-Federal recipient (exhibit 610.96).

#### (2) Applicants, Awardees, or Sub-awardees

**This section provides internal guidance for the NRCS officials. Responsible Officials shall review the application to ensure that NRCS does not enter into a contribution agreement and goals involving an organizational conflict of interest that may be contrary to the purpose and goals of the agreement.**

**Contribution agreement means the legal instrument entered into under 7 U.S.C. 6962(a). Provisions designed to guard against a conflict of interests on the part of a non-Federal party to contribution agreements may be generally applicable to the parties if included in the contribution agreement document. Review the application for information such as the following:**

- (i) The possibility that any current or former employee of the U.S. Department of Agriculture (USDA) may be compensated in any way with funds provided by the contribution agreement.
- (ii) The disclosure that any contribution agreement funds may be used to purchase equipment, services, or supplies from entities in which an applicant or applicant's employee has a financial or other interest.
- (iii) The possibility of organizational conflicts of interest based on the plan of work. Identify and evaluate potential organizational conflicts of interest. Consider the impact of potential conflicts in situations where an applicant is substantially involved in activities that could create a conflict of interest in performing certain tasks under the plan of work. It is not inappropriate to make the award to the apparent successful applicant that is the choice of the Signatory Official unless a conflict of interest is determined to exist that cannot not be avoided or mitigated.

For specific guidance regarding real and apparent organizational conflicts of interest, contact the Office of General Counsel.

## **610.25 Budget Components and Proper Budget Analysis**

A good working knowledge of the budget components and proper budget analysis during the application review process will help resolve issues before they become problems. Non-cash contributions are defined in Section 610.2. Costs that do not meet the requirements based on the proposal may later be disallowed. Costs must be allowable, allocable, and reasonable as noted below.

### **A. Cost Criteria: Allowable Costs for Partner's 50 Percent Contributions**

A cost is allowable if it is:

- (1) Necessary and reasonable to accomplish the project.
- (2) Allowable under the applicable program authority.
- (3) Treated consistently by the applicant.
- (4) In accordance with generally accepted accounting principles.
- (5) Not a contribution being used simultaneously with any other proposal currently submitted for similar work.
- (6) Adequately documented.
- (7) Authorized or not prohibited under State or local laws or regulations.

### **B. Cost Criteria: Allocable Costs**

A cost is allocable if it is treated consistently by the applicant and if it:

- (1) Is incurred specifically for the project.
- (2) Meets applicable program authority.

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(3) Is necessary to accomplish the plan of work specific to the project, but not to the overall operation of the applicant or where no direct relationship to the project can be tracked.

### C. Cost Criteria: Reasonable Costs

A cost is reasonable if the nature or amount does not exceed what a prudent person, given the same circumstance, would expect to incur.

### D. Cost Criteria: Analysis Elements

The suggested information listed below is the minimum needed from the applicant to help NRCS determine whether costs included meet the criteria of allowability, allocability, and reasonableness. Thorough analysis of the budget prior to award is critical because it is the last opportunity for NRCS to know how Federal funds will be spent. Once the agreement is signed, the participant is free, within certain limitations, to move money around from one category to another. The budget cost element should be separated into cash and non-cash shares. The in-kind, non-cash share is a contribution made to the total cost of the project where the applicant incurs no expense. The applicant's non-cash share may also include reimbursable project costs involving cash disbursements for direct charges for goods and services. Analysis elements include, but are not limited to the following:

#### (1) Budget Information

Look closely at each individual cost element in the budget. Supplement the budget with an additional detailed cost breakdown supporting each of the budget cost elements.

#### (2) Personnel

- (i) Identify whether employees are full-time, temporary, or part-time workers.
- (ii) List personnel needed to accomplish this project.
- (iii) List their classifications.
- (iv) Note number of hours to be worked.
- (v) Note the rate of pay per hour for each major task in the project (or percentage of effort), the total for each employee, and the overall total.
- (vi) Identify key investigators, titles, number of hours to be worked, the rate of pay per hour, and total.
- (vii) Address the basis for determining employee compensation.
- (viii) Identify any compensation increases projected during the award period.
- (ix) Identify any benefits included in the wages or salaries, (e.g., vacation and sick leave).

#### (3) Analysis of Personnel Cost: Individual Salaries

Salaries quoted in excess of the normal pay for an individual are not allowed. Average salaries for any particular geographic region normally are published, or an applicant such as a university can provide a copy of the pay scale for comparison purposes.

#### (4) Analysis of Personnel Cost: Benefits Assessment

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Part-time and temporary employees and students usually do not receive full benefits. If these types of employees are listed in personnel costs, the rates should be verified to ensure proper benefits assessment.

### (5) Fringe Benefits

- (i) List benefits included (i.e., health and life insurance, Medicare, unemployment insurance, workers' compensation, retirement, etc.).
- (ii) Determine a percentage breakdown of all components in the applicant's fringe benefits package.

### (6) Travel/Transportation

- (i) Provide the number of travelers, type, and estimated cost of transportation, to and from destinations, and total. (If actual trips are unknown, provide the basis for the proposed travel charges.)
- (ii) Provide the per diem rates, number of days at dollars per day, and total.
- (iii) Identify the purpose of each trip.

### (7) Travel Analysis

Each trip planned must be necessary to the project's performance. Any miscellaneous or contingency charges must be eliminated from the budget. Applicants are not required to follow Federal travel regulations; however, compliance with Federal travel regulations may be made a term of the agreement.

### (8) Equipment

Equipment may be purchased if deemed necessary to perform the mutual objective. If purchased by NRCS, Federal Contracting Procedures will apply and NRCS retains ownership. If purchased by the partner, ownership remains with that partner.

### (9) Supplies

Supplies consist of expendable items of low value (less than \$5,000) that are consumed in performing the project (for example, paper and pencils). Determine if the level and cost of supplies proposed are reasonable and justified.

### (10) Contracts

- (i) Identify all anticipated sub-awards by purpose (research, service, supply, etc.) and type.
- (ii) Describe how procurement will be accomplished: competitive or sole source. Sole source procurements require that justification be included in the application package.

### (11) Consultants

- (i) Name(s) of consultants(s) to be engaged.
- (ii) Daily fees to be paid to each consultant.
- (iii) Number of estimated days for continuing services.
- (iv) Scope of work to be performed (deliverables).
- (v) Other incidental data supporting the proposed costs (cost of current similar work).

(12) Other Costs

Take a close look at any costs placed in the "Other" category. Ensure that they are detailed and clearly identified. Ensure that the costs are explained appropriately and are necessary and properly allocated to the proposed contribution agreement.

(13) Indirect Funds

No indirect funds will be charged to contribution agreements since those costs would be captured in the 50 percent share.

(14) Program Income

Program income is the gross revenue generated by an agreement-supported activity between the effective date of the award and the date of the final expenditure report.

(15) Program Income Analysis

Program income can be made by participants from fees charged for conference or workshop attendance, from rental fees earned from renting out real property or equipment acquired with contribution agreement funds, or from the sale of commodities or items developed under the agreement. Do not consider interest earned by the participant on funds advanced by NRCS as program income. Interest must be paid back to NRCS unless the participant is a State and thus exempted by Federal statute under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.). Consider the type of project proposed. If the project appears to be one where fees might be charged, such as supporting conferences or workshops, verify whether or not fees are going to be charged. If program income is generated, reflect this in the budget. Document the agreed-upon method of using program income in the agreement document. Stipulate the Deductive Alternative described in Title 7, Code of Federal Regulations. Any other alternative must be approved in writing by the NRCS Signatory Official.

(16) Construction Project

The above-referenced cost elements deal primarily with non-construction projects. If the application is for a construction project, perform the same type of cost analysis as noted above. A construction project involves other requirements such as State procurement requirements and specific subcontract approvals; subcontract clauses, such as Equal Employment Opportunity (EEO); and Department of Labor notifications, etc.

## **610.26 Financial Strengths and Capabilities**

Information should be obtained on the following:

A. Past Performance

Applicant's past performance in financing operations, management, and proven performance in the related agreement task or objective.

B. Facilities

If the facilities are adequate and available to perform the project.

C. Cost Controls

Cost controls, such as linking increases to inflation rates and expenditure reports.

D. Accounting Systems Policies

Accounting system policies and procedures are adequate to track related project costs.

E. Procurement Procedures

Property management standards and procurement procedures are in place.

F. Personnel Practices

Personnel practices comply with nondiscrimination provisions.

G. Sub-Awardees

Sub-awardees comply with mandatory clauses included in the contribution agreement.

## **610.27 Payment**

A. Payment Type

Determine the payment type requested by the applicant: advance versus reimbursement of funds. Consider which type is most appropriate for the project and performance period being proposed. If you are in doubt, seek advice from the NRCS Budget Officer.

B. Request for Advance or Reimbursement

To request payment(s), participants must complete and submit an original SF-270 with original signatures to the Responsible Official contact identified in the contribution agreement.

C. Statute/Administrative Rules

If the statute requires payment on an advance or reimbursement basis, follow the statutes. If the statute is silent, use the OMB Circulars relative to the payee for guidance purposes only.

D. Payment Preference

Give advance payments preference unless the participant's financial management system does not meet the standards for fund control and accountability, or the participant has not established or demonstrated a willingness and ability to minimize the time elapsing between the transfer of funds from the U.S. Department of Treasury and their disbursement by the participant. In the latter case, payments on a cost-reimbursable basis should be given preference, based on cash-management principles.

E. Timing and Payment Amount

When advance payments are approved, make the timing and amount of cash advances as close as is administratively feasible to the actual disbursement by the applicant's organization for direct program costs reflected in their budget.

F. Electronic Funds Transfer

Payments will be subject to electronic funds transfer (EFT).

## **610.28 Interest**

A. Interest Income

Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23



U.S.C. 450), interest earned by the participant on funds advanced by the NRCS does not constitute program income.

**B. Interest Income Thresholds**

The participant will remit to NRCS as program income all interest income earned on advances of USDA grant funds above the following thresholds:

- (1) State and local grant recipients may keep up to \$100 of interest per year for administrative purposes.
- (2) Non-profit organizations and universities may keep up to \$250 of interest per year for administrative purposes.
- (3) Tribal governments may keep up to \$100 of interest per year for administrative expenses.

**610.29 Certifications**

For contribution agreements, check to ensure the proper certifications are included in the attached budget sheet. (See Subpart H, Exhibits, Section 610.93.)

**610.30 Prior Approvals**

Identify any areas where NRCS may want to reserve the right of prior approval, such as the award of sub-agreements and changes in the principal project manager.

**610.31 Reporting Requirements**

**A. Financial Reports**

Participants are not required to file an Form SF-269, Financial Status Report.

**B. Performance Reports**

Participants may be directed to submit performance reports not more than quarterly, but not less than annually.

**610.32 Jointly Purchased Equipment**

NRCS may reserve the right, in the agreement, to take title to equipment purchased with partial Federal funds after project completion.

**610.33 Agreement Document**

Once all requirements have been met and agreement has been reached between the parties, the agreement document can be prepared. See Subpart H, Exhibits, Section 610.91, for mandatory clauses to be included. Other statements to be included are as follows:

**A. Mandatory Agency Statement**

You must include the following statement: The Uniform Federal Assistance Regulations found in Title 7, Chapter XXX of the Code of Federal Regulations and Office of Management and Budget Circulars, that apply to grants and cooperative agreement, do not apply to contribution agreements; however, they may be referred to for the purpose of procedural administration of this agreement.

**Each Memorandum of Understanding and Cooperative Agreement where money or personnel are exchanged, or where NRCS will designate an employee to serve as a liaison to a non-Federal organization shall include the required ethics provision as provided in exhibit 610.95.**

**B. Electronic Funds Transfer (EFT)**

A statement notifying the participant that the Debt Collection Act of 1996, as amended, 31 U.S.C. 3332, requires Federal Agencies to convert from payments by check to Electronic Fund Transfer (EFT). This requirement is effective January 2, 1999, unless the participant organization can certify that it does not have an account with a financial institution or an authorized payment agent. The participant must apply for a Vendor Identification Number (VIN) from the National Finance Center (NFC). This process is outlined below:

- (1) The participant organization must contact the Miscellaneous Payment Section of the NFC to request an Enrollment Package. The telephone number is 800-421-0323. The package will include a nine-digit Vendor Identification Number (VIN).
- (2) The participant organization must complete the enrollment package, which includes a section for its financial institution to complete, and return the package to the NFC.
- (3) The participant must include the VIN on all invoices submitted to NRCS for payment. This should be shown on the second line of the remittance address.
- (4) The participant organization is responsible for following up with the NFC to ensure that its VIN is coded as "active" prior to requesting its first Federal payment.
- (5) Establishment of the VIN takes from 3 to 6 weeks.

**C. Specific Agency Requirements**

Provide statements identifying specific agency requirements, such as frequency of progress and financial reports (annual, semi-annual, or quarterly); forms required for financial reports; billing procedures (advance versus reimbursable); agency program and administrative contacts; property requirements; use of program income (Deductive Alternative); required approvals, including sub-awards, subcontracts, budget changes, and so forth.

**D. Signature Blocks**

Complete bilateral signature blocks.

**E. Financial Code**

A financial code defines the accounting information to identify the type of fund, obligation type, category, funding year, etc. used. This number is assigned by the NRCS Budget Officer.

**F. Number the agreement. Log the agreement in the log book kept by the grants and cooperative specialist.**

**610.34 Participant Award: Executed Contribution Agreement**

Include the approved application as part of the executed contribution agreement. Ensure that the application includes all items, such as the budget and project statement.

## **610.35 Final Execution and Official Award Distribution**

### **A. Official Award Document Procedure**

When the official award document is assembled, the following steps should be taken:

#### **(1) Approvals**

Obtain necessary approvals as applicable (See Delegations of Authority.)

#### **(2) Applicant Signatures**

Obtain applicant signature(s) on the award document.

#### **(3) Signatory Official Signatures**

Once the award document is completed and necessary approvals have been obtained, the NRCS Signatory Official may sign the agreement.

### **B. Distribute Copies**

Distribute copies of the signed official award document to the participant(s), fiscal staff (for payments), Responsible Official, and technical/program personnel. Ensure that the original agreement document resides wherever the official file is maintained. Participant(s) may legally incur costs to be reimbursed by NRCS as of the date of the last signature obtained on the agreement.

## **Part 610 – Contribution Agreements**

### **Subpart C – Administering Contribution Agreements**

**610.40 Setting Up an Official File**

**610.41 Post-Award Meetings**

**610.42 Payment Approval**

## **Part 610 – Contribution Agreements**

### **Subpart C – Administering Contribution Agreements**

#### **610.40 Setting Up an Official File**

Establish an official file that includes the following:

- (1) Application Information and Correspondence.
- (2) Contribution Agreement Document.
- (3) Payment Document(s).
- (4) Post Award Correspondence.
- (5) Reports.
- (6) Closeout Documentation.

#### **610.41 Post-Award Meetings**

##### **A. Purpose**

Post-award meetings are encouraged and should be held within 30 days of awarding a new agreement. The purpose of the meeting is to discuss pertinent administrative requirements, such as significant clauses, provisions, and operating procedures specifically identified in the documents. This is an opportunity to define each party's role and to answer any last minute questions prior to commencement of work.

##### **B. Optional**

A post award meeting is optional. The need to conduct a post-award meeting depends on complexity, dollar value, and use of good business judgment.

#### **610.42 Payment Approval**

##### **A. Responsible Official Approval**

If all of the information entered on the SF-270 is correct, the Responsible Official shall certify (see B and C below), sign, and date the SF-270 in the space provided for Agency use. Submit the original SF-270 to the Finance Office for payment, and send a copy to each of the other program or administrative contacts.

##### **B. Reimbursable Agreements**

The SF-270 must be certified by the Responsible Official with the following statement signed and dated in the "This space for agency use" area at the bottom of the SF-270.

"I certify that, to the best of my knowledge, this bill has not been previously submitted and that program accomplishments will meet planned activities under this agreement. I have examined and certify that this request is correct for payment."

##### **C. Funds Advance Agreement**

The SF-270 must be certified by the Responsible Official with the following statement signed and dated in the "This space for agency use" area at the bottom of the form.

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"I certify that to the best of my knowledge, this advance is necessary to meet planned activities under this agreement. I have examined and certify that this request is correct for payment."

## **Part 610 – Contribution Agreements**

### **Subpart D – Revisions**

#### **610.50 Revisions**

## **Part 610 – Contribution Agreements**

### **Subpart D – Revisions**

#### **610.50 Revisions**

Revisions may be approved upon mutual consent of all parties to the agreement. This revision must be documented in writing referencing the original agreement and signed by the original signatories.



## **Part 610 – Contribution Agreements**

### **Subpart E – Reviews**

#### **610.60 NRCS Program Reviews**

#### **610.61 Performance Reports and Site Visits**

## **Part 610 – Contribution Agreements**

### **Subpart E – Reviews**

#### **610.60 NRCS Program Reviews**

The NRCS or its representatives may conduct program reviews at any time.

#### **610.61 Performance Reports and Site Visits**

##### **A. Performance Reports**

Check the agreement to determine the frequency of performance reports required. Ensure that performance reports are submitted at least annually, but no more than quarterly. Each performance report shall include at a minimum a statement of progress, including the results to date and a comparison of actual accomplishments with proposed goals for the period; any current problems or unusual developments or delays; and work to be performed during the succeeding period. Some of these issues may require action by NRCS personnel which may include obtaining additional information, withholding payments, or suspending the contribution agreement.

##### **B. Site Visits**

In instances where an agreement involves a complex project and/or one of high dollar value, official site visits may be beneficial. Site visits are a good way to determine appropriate use of NRCS funded equipment, proper allocation of facilities to the contribution agreement, and whether actual performance agrees with the project performance reports.

## **Part 610 – Contribution Agreements**

### **Subpart F – Suspensions and Terminations**

#### **610.70 Suspensions**

#### **610.71 Terminations**

## **Part 610 – Contribution Agreements**

### **Subpart F – Suspensions and Terminations**

#### **610.70 Suspensions**

##### **A. Requirements**

A contribution agreement may be suspended, either in whole or in part, when a participant has materially failed to comply with its terms and conditions. Areas that may justify suspension are performance related and may include a change in methodology without proper approval, failure to submit required reports, performance outside the scope of the instrument, and the appearance of improper cost expenditures. Issue advance written notice that reflects the cause of the action, corrective action required participant, and the effective date. Do not allow new obligations during the suspension period; however, obligations the participant incurred prior to the suspension may be allowed with NRCS approval if otherwise unavoidable, such as fixed cost for space or other unliquidated obligations.

##### **B. Recipient Actions**

If the recipient takes corrective action, the suspension may be lifted. In this case, the recipient should be notified in writing of the date the performance may resume. If the recipient does not take corrective action, NRCS should proceed to terminate the contribution agreement. Depending on the circumstances of the violation, NRCS may terminate the contribution agreement without suspension.

#### **610.71 Terminations**

##### **A. Requirements**

A contribution agreement may be terminated, in whole or in part, at any time prior to the expiration of the agreement if the participant fails materially to comply with its terms and conditions. Areas that may justify termination are performance related and may include a change in methodology without proper approval, failure to submit required reports, performance outside the scope of the instrument, and the evidence of improper cost expenditures. Give the participant written notification defining the deficiencies, requesting a "cure" of these deficiencies, and ask the participant to submit a corrective plan of action within a reasonable amount of time, (e.g., 30 to 60 days). If the participant does not submit a plan of correction action within the timeframe established in the notification, termination action may be initiated. Give the participant written notification stating the reason for termination and the effective date. Termination may also be exercised when NRCS and the participant agree upon the termination conditions. Upon termination of an agreement, the participant shall not incur any new obligations after the effective date, and shall cancel as many outstanding obligations as possible. NRCS may allow full credit to the participant organization for its share of the non-cancelable obligations the participant properly incurred prior to termination.

##### **B. Excess Funds**

Terminations may result in excess funds remaining in the agreement. If payments were made on a cost-reimbursement basis, de-obligate the excess funds. If payments were made on an advance basis, the participant shall refund any excess funding to NRCS. In

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either case, document the de-obligation of funds by written revision to the contribution agreement.

## **Part 610 – Contribution Agreements**

### **Subpart G – Closeout**

#### **610.80 Closing Out Contribution Agreements**

## **Part 610 – Contribution Agreements**

### **Subpart G – Closeout**

#### **610.80 Closing Out Contribution Agreements**

**A. NRCS Process**

Closeout of a contribution agreement is the process by which NRCS determines that all applicable administrative actions and all required work have been completed by the NRCS and the participant. See the following sections for several important elements needed to close a contribution agreement.

**B. Reporting Requirements: Contribution Agreement Terms**

The Signatory Official shall ensure that all required reports are received in accordance with the terms of the contribution agreement and that the file contains a copy of the quarterly, semi-annual, annual, and/or final report(s).

**C. Funds De-Obligation: Excess Funds**

Determine if excess funds remain in the contribution agreement. If this occurs, and payment was made on a reimbursement basis, de-obligate the excess funds. If payments were made on an advance basis, the participant shall refund any excess funding to NRCS. In either case, for proper closeout, document the de-obligation of funds by written revision to the contribution agreement. If the participant forwards an SF-270 that bills the NRCS for costs exceeding the total funds obligated for the contribution agreement, payment may be made only for the amount of the total funds obligated. Contact the participant immediately and request a revised final SF-270.

**D. Records/Files Consolidation**

Consolidate all copies of NRCS files for the contribution agreement in accordance with the NRCS Records Guide.

## **Part 610 – Contribution Agreements**

### **Subpart H - Exhibits**

**610.90 Authorities**

**610.91 Contribution Agreement**

**610.92 Special Provisions for 7 U.S.C 6962a, Contribution Agreements**

**610.93 Application for Assistance: Checklist**

**610.94 Plan of Work**

**610.95 Ethics Provision for MOUs and Agreements**

**610.96 Template - Designation of Agency Liaison**

**610.97 Proposal Reviewer – Conflict of Interests and Confidentiality  
Statement**



## 610.90 Authorities

Agricultural Management Assistance (AMA), 7 U.S.C. 1524(b), 7 CFR 1465 (CFDA 10.917)
Colorado River Basin Salinity Control Program, 43 U.S.C. 1571, 1591–1594 (CFDA 10.070)
Conservation Innovation Grants, 16 U.S.C. 3839aa–8 (CFDA 10.912)
Conservation of Private Grazing Land, 16 U.S.C. 3839bb (CFDA 10.902)
Conservation Technical Assistance Program (CTA), 16 U.S.C. 590a–590f, 590q, 7 CFR Part 610 (CFDA 10.902)
Emergency Watershed Protection Program (EWP), 33 U.S.C. 2203, as amended. 7 CFR Part 624 (NO CFDA #)
Environmental Quality Incentives Program (EQIP), 16 U.S.C. 3839aa–3839aa–8, 3841, 7 CFR Part 1466 (CFDA 10.912)
Farm and Ranch Lands Protection Program, 16 U.S.C. 3830 (CFDA 10.913)
Farmland Protection Policy Act, 7 U.S.C. 4201 <i>et seq.</i> , 7 CFR 658 (CFDA 10.913)
Forestry Incentives Program (FIP), 16 U.S.C. 2103, 7 CFR Part 701 (CFDA 10.064)
Ground and Surface Water Conservation – Environmental Quality Incentives Program, 16 U.S.C. 3801 <i>et seq</i> (CFDA 10.918)
Highly Erodible Land and Wetland Conservation, 16 U.S.C. 3801 <i>et seq.</i> , 7 CFR Part 12 (CFDA 10.902)
Klamath Basin – Environmental Quality Incentives Program, 16 U.S.C. 3801 <i>et seq</i> (CFDA 10.919)
Land Inventory and Monitoring Program, 7 U.S.C. 1010a (CFDA 10.902)
National Resources Inventory (NRI), 16 U.S.C. 2004 (CFDA 10.902)
Plant Materials for Conservation, 16 U.S.C. 590a–590f (CFDA 10.905)
Resource Conservation and Development Program, 7 U.S.C. 1010 and 1011; 16 U.S.C. 590a–590f, 590q, and 3451–3461 (CFDA 10.901)
Rural Abandoned Mine Program (RAMP), 30 U.S.C. 1236, 7 CFR Part 632 (CFDA 10.901)
Snow Survey Program, 16 U.S.C. 590a–f (CFDA 10.907)
Soil Survey Program, 16 U.S.C. 590a–f, 42 U.S.C. 3271–3274 (CFDA 10.903)
Soil and Water Resources Conservation Assistance, 16 U.S.C. 3830 note (CFDA 10.902)
Soil and Water Resources Conservation Program, 16 U.S.C. 2001–2009 (CFDA 10.902)
Watershed Protection and Flood Prevention Program, 16 U.S.C. 1001–1009, 33 U.S.C. 701b–1 (CFDA 10.904)

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Watershed Rehabilitation Program, 16 U.S.C. 1012 (CFDA 10.916)
Wetlands Reserve Program (WRP), 16 U.S.C. 3837–3837F, 7 CFR Part 1467 (CFDA 10.072)
Wildlife Habitat Incentives Program (WHIP), 16 U.S.C. 383a, 7 CFR Part 636 (CFDA 10.914)

## WRP Sample Contribution Agreement

### 610.91 Contribution Agreement

This agreement is by and between \_\_\_\_\_, called Recipient, and the United States Department of Agriculture (USDA), Natural Resources Conservation Service, called NRCS.

#### I. AUTHORITY

NRCS authority to enter into this agreement is the Food Security Act of 1985, Title XII, Public Law 99–198, as amended; Food Agriculture, Conservation and Trade Act of 1990, Title XIV, Section 1237, Public Law 1–101-624, 104 Stat. 3584, 7 U.S.C. 3837, as amended; Omnibus Budget Reconciliation Act of 1993; Federal Agriculture Improvement and Reform Act of 1996; Agriculture Appropriations Act of 1997; Farm Security and Rural Investment Act of 2002, Public Law 107–171 and Public Law 106–387, 7 U.S.C. 6962(A)

#### II. PURPOSE

The purpose of this agreement is to deliver the agricultural programs that are a part of the Farm Security and Rural Investment Act “Farm Bill” of 2002.

#### III. MUTUAL INTEREST

*NRCS program manage—provide information on what the mutual interest(s) is for inclusion in this section.*

#### IV. RESPONSIBILITIES

##### A. THE RECIPIENT WILL:

1. Provide a minimum of 50 percent of the cost of the work described in the attached plan of work and budget. This 50 percent of cost is estimated to be \$\_\_\_\_\_.
2. Design restoration measures to be installed, and solicit and award contracts for restoration to be performed on each WRP site, and provide inspection services on each site during installation of restoration measures as described in detail in Attachment C, Plan of Work. Obtain NRCS approvals as shown in the attached plan of work.
3. Request reimbursement monthly by submitting a completed form SF–270, Request for Advance or Reimbursement, with supporting documentation to NRCS. Refer to Attachment B – Budget which is attached. Include a Vendor Identification Number (VIN) on the second line of the remittance address on all SF–270 forms submitted for payment in order for NRCS to make payment by electronic funds transfer. Total amount of reimbursement from NRCS will not exceed \$\_\_\_\_\_.

*(NRCS Program Manage—identify type of documentation needed to allow program manager to certify payments to show services were received. Must relate to the budget and programmatic authority and be allowable, allocable, and reasonable. If the SF–270 is to be sent to a specific individual in NRCS, identify that individual, including name, address, and fax and phone numbers.)*

*(If recipient does not have a Vendor Identification Number for electronic funds transfer in the FFIS*

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*payment system, include the following clause.)*

4. Obtain a Vendor Identification Number (VIN) if recipient does not currently have one. VIN can be obtained as follows:

Contact the Miscellaneous Payment Section of the National Finance Center (NFC) to request an Enrollment Package. The telephone number is 800-421-0323. The package will include a nine-digit Vendor Identification Number (VIN). Complete the enrollment package, which includes a section for the financial institution to complete, and return the package to NFC. Follow up with NFC to ensure that VIN is coded as "Active" prior to submitting first payment request.

*(If a different payment method will be used such as CCC payments using other than SF-270, describe that process. Paragraphs 3 and 4 may be altered or deleted, as appropriate.)*

7. Comply with the Attachment A, Special Provisions, and Attachment B, Plan of Work, which are attached.
8. Provide the following as a liaison:

	<u>Technical</u>	<u>Administrative</u>
Name:		
Address:		
Telephone No.		
Facsimile No.		
Email Address:		

### **B. NRCS WILL:**

1. Provide a maximum of 50 percent of the cost of the work described in the attached plan of work and budget. This cost to NRCS will not exceed \$\_\_\_\_\_.
2. Provide planning documents and surveys as described in the attached plan of work.
3. Reimburse upon receipt and approval of form SF-270, Request for Advance or Reimbursement. Items of work approved for reimbursement are shown in Attachment B, Budget.
4. Provide the following as a liaison:

	Technical	Administrative
Name:		
Address:		
Telephone No.		
Facsimile No.		
Email Address:		

### **V. IT IS MUTUALLY AGREED:**

- A. This agreement is effective upon date of final signature. This agreement is effective through September 30, 2004. It may be renewed by amendment until the objectives of the agreement are (120-VI-CAH, First Edition, April 2004)

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accomplished, but not later than the end of the fiscal year in which work is completed.

- B. This agreement may be amended in writing by mutual consent of the parties to this agreement.
- C. This agreement may be temporarily suspended by NRCS if NRCS determines that corrective action by the recipient is needed to meet the provisions of this agreement. Further, NRCS may suspend this agreement when it is evident that a termination is pending.
- D. This agreement may be terminated by either party by written notice to the other party or parties at least 30 days in advance of the effective date of the termination.
- E. NRCS may terminate this agreement in whole or in part if NRCS determines the recipient has failed to comply with any of the conditions of this agreement. NRCS shall promptly notify the recipient in writing of the determination and reasons for the termination, together with the effective date. Payments made by or recoveries made by NRCS under this termination shall be in accord with the legal rights and liabilities of NRCS and the recipient.
- F. Employees of the recipient shall remain its employees while carrying out their duties under this agreement and shall not be considered as Federal employees or agents of the United States for any purpose under this agreement.

*(The following Clause G, as required by General Manual, Title 110, Part 405.405.15, regarding employees of NRCS is to be and adhered to and included in any Cooperative Agreement where money or personnel are exchanged, or where NRCS will designate an employee to serve as liaison to the organization. )*

- G. Employees of NRCS shall participate in efforts under this agreement solely as representatives of NRCS. To this end, they shall not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of [the partner or other non-Federal entity with whom NRCS is entering into the MOU] or any member [entity]. They also shall not assist [the entity], or any member [entity] with efforts to lobby Congress, or to raise money through fundraising efforts. Further, NRCS employees shall report to their immediate supervisor any negotiations with [entity], or any member [entity], concerning future employment and shall refrain from participation in efforts regarding such party until approved by the Agency.
- H. The furnishing of financial and other assistance by NRCS is contingent upon funds appropriated by Congress, made administratively available, or authorized by law.
- I. Privacy of personal information relating to Natural Resources Conservation Service Programs will be in accordance with Section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171, 116 Stat. 235).
- J. By signing this agreement, the recipient assures the Department of Agriculture that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.
- K. As a condition of this agreement \_\_\_\_ assures and certifies that it is in compliance with, and will comply in the course of this agreement with all applicable laws, regulations, executive orders, and other generally applicable requirements.

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### RECEIPT:

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

### U. S. DEPARTMENT OF AGRICULTURE NATURAL RESOURCES CONSERVATION SERVICE

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Subpart H, Exhibits, Section 610-92, Special Provisions for U.S.C. 6962a, Contribution Agreements  
Subpart H, Exhibits, Section 610.93, Application for Assistance: Checklist  
Subpart H, Exhibits, Section 610.94, Plan of Work

## 610.92 Special Provisions for 7 U.S.C. 6962a, Contribution Agreements

The cooperator agrees to comply with the following special provisions that are hereby attached to this agreement.

### I. Drug-Free Workplace

By signing this agreement, the cooperator is providing the certification set out below. If it is later determined that the cooperator knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the NRCS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFS 1308.11 through 1308.15).

Conviction means a finding of (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacturing, distribution, dispensing, use, or possession of any controlled substance.

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including (i) all direct charge employees; (ii) all indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirements; consultants or independent contractors not on the grantees' payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification:

A. The grantee certifies that it will or will continue to provide a drug-free workplace by—

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

- (1) The danger of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug-abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph 9a that, as a condition of employment under the grant, the employee will—

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- (1) Abide by the terms of the statement; and
- (2) Notifying the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such a conviction.

(e) Notifying NRCS in writing, within 10 calendar days after receiving notice under paragraph 9(d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good-faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(h) Agencies shall keep the original of all disclosure reports in the official files of the agency.

B. The cooperator may provide a list of the site(s) for the performance of work done in connection with a specific project or other agreement.

## **II. Certification Regarding Lobbying (7 CFR 3018) (Applicable if agreement exceeds \$100,000)**

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the cooperator, to any person for influencing or attempting to influence an officer or employee of an agency, Member of Congress, and officer or employer of Congress, or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(3) The cooperator shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

*Special Provisions I & II are mandatory for all Contribution Agreements. All other special provisions should be included as deemed necessary by the developing State.*



**III. Certification Regarding Debarment, Suspension, and Other Responsibility matters—Primary Covered Transactions (7 CFR 3017)**

(1) The cooperator certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal has one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the primary cooperator is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.

**IV. Clean Air and Water Certification (Applicable if agreement exceeds \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c–8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt.)**

The cooperator signatory to this agreement certifies as follows:

(a) Any facility to be utilized in the performance of this proposed agreement is \_\_\_\_\_, is not\_\_\_\_\_, listed on the Environmental Protection Agency List of Violating Facilities.

(b) To promptly notify the State or Regional Conservationist prior to the signing of this agreement by NRCS, of the receipt of any communication from the Director, Office of Federal Activities, U. S. Environmental Protection Agency, indicating that any facility that he/she proposes to use for the performance of the agreement is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.

(c) To include substantially this certification, including this subparagraph (c), in every nonexempt sub-agreement.

**Clean Air and Water Clause**

(Applicable only if the agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c–8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA or the agreement is not otherwise exempt.)

A. The cooperator agrees as follows:

(1) To comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91–604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., as amended by Public Law 92–500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and (120-VI-CAH, First Edition, April 2004)

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section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the signing of this agreement by NRCS.

(2) That no portion of the work required by this agreement will be performed in a facility listed on the Environmental Protection Agency (EPA) List of Violating Facilities on the date when this agreement was signed by NRCS unless and until the EPA eliminates the name of such facility or facilities from such listing.

(3) To use their best efforts to comply with clean air standards and clean water standards at the facilities in which the agreement is being performed.

(4) To insert the substance of the provisions of this clause in any nonexempt subagreement, including this subparagraph A. (4).

B. The terms used in this clause have the following meanings:

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

(2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-55).

(3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 1857c-5(d)), and approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standards, or other requirement which is promulgated pursuant to the Water Act or contained a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (3 U.S.C. 1317).

(5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with the scheduled or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or any air or water pollution control issued pursuant thereto.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations, owned leased, or supervised by a sponsor, to be utilized in the performance of an agreement or subagreement. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collated in one geographical area.

### **V. Assurances and Compliance**

As a condition of the grant or cooperative agreement, the recipient assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those set out in 7 CFR 3015, 3016, 3017, 3018, 3019, and 3052, which hereby are incorporated in this agreement by reference, and such other statutory provisions as are specifically set forth herein.

**VI. Examination of Records**

Give NRCS or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this agreement. Retain all records related to this agreement for a period of three years after completion of the terms of this agreement in accordance with the applicable OMB Circular.

610.93 Application for Assistance: Checklist

**U. S. DEPARTMENT OF AGRICULTURE**  
**Natural Resources Conservation Service**

**NRCS-ADS-400**  
**2/2004**

**1. DATE SUBMITTED** \_\_\_\_\_

**2. APPLICANT INFORMATION**

Legal Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

**3. TYPE OF APPLICANT:** (Enter Appropriate Letter in Box) ☐

- A. State
- B. Political Subdivision, or Agency There Of
- C. Public or private agency, organization, or any other person

**4. EMPLOYER IDENTIFICATION NUMBER (EIN): or**

**TAX IDENTIFICATION NUMBER (TIN)**  
**(COLLECT AFTER AWARD)**

—

**5. TYPE OF APPLICATION:** ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es)

- A. Increase Award
- B. Decrease Award
- C. Increase Duration
- D. Decrease Duration
- E. Other (specify):

**6. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:**  
**PROGRAM:**

**7. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**8. ESTIMATED FUNDING:**

	<b>Non-Fed Entity</b>	<b>NRCS</b>
A. Salaries	_____	_____
B. Benefits	_____	_____
C. Travel	_____	_____
D. Office Space	_____	_____
E. General Office Supplies	_____	_____
F. Program Income	_____	_____
G. Contracting	_____	_____
H. Equipment	_____	_____
I. Other (List as attachment)	_____	_____
J. Non-Cash Contribution (List as attachment)	_____	_____

Grand Total \_\_\_\_\_

**9. Name of Authorized Representative of Applicant or Contact Person**

\_\_\_\_\_

Title \_\_\_\_\_

Telephone Number \_\_\_\_\_

NOTE: NRCS's Contribution is not to exceed 50 percent of the total cost of the agreement. In cases where there are more than two parties to the agreement, all parties will contribute their equal share. Exceptions to the 50 percent contribution is delegated to the State conservationist only.

Approval of Application by NRCS

\_\_\_\_\_  
Authorized Agency Official

\_\_\_\_\_  
Date

## 610.94 Plan of Work

*The work plan needs to be described here by the Program Manager. This section should outline the deliverables and the dates of deliverables.*

### *EXAMPLE OF DELIVERABLES:*

**Scope of Work:** Work will include design of restoration measures to be installed, solicitation and award of restoration contracts, and related inspection services during practice installation in support of the Wetlands Reserve Program. This work will consist of all restoration measures to be accomplished during FY 2004. It is anticipated this will consist of 18–20 projects.

The technical tasks will generally consist of collecting survey data to prepare design plans, preparing all aspects of solicitations, and resulting award documentation and administration, associated performance reports, construction inspection, and coordination and communication with contractor personnel and NRCS engineers.

*Examples of areas of WRP assistance covered by this agreement are as follows:*

**(a) Designing restoration measures:** Collecting all necessary survey data from NRCS engineers to develop design plans for restoration measures. All practices will be designed to meet NRCS Field Office Technical Guide (eFTOG) standards.

**(b) Soliciting and awarding of contracts:** Prepare all documentation to solicit and award restoration contracts. This includes all administration of the contracting process from pre-award through post-award activities. Examples of these activities include but are not limited to, advertising, awarding the contract, modifying the contract, conducting status reviews, project documentation, and documentation for payment requests.

**(c) Inspection services:** Onsite personnel will be at the restoration site throughout the performance of the restoration activity to ensure that work is carried out to meet established performance timeline and will meet all NRCS documentation for payment requests.

**Location of WRP Technical Services:** The locations of this WRP assistance work shall be performed in the field and office environments based on specific task(s) assigned. The field locations will be identified as the design work is completed for various projects throughout the State.

**Work Task Reporting:** The recipient will maintain a record of the progress toward completing the restoration designs, solicitations and awards accomplished, and inspection of measures installed. Progress will be summarized and reported to NRCS on a monthly basis.

## **610.95 Ethics Provision for MOUs and Agreements**

Adapt and include the following paragraph in any MOU or Agreement where money or personnel are exchanged, or where NRCS will designate an employee to serve as liaison to the organization: This will define and clarify the division of employee loyalties, a frequent issue in partnership relationships.

### **Required Provision**

Employees of NRCS shall participate in efforts under this agreement solely as representatives of the United States. To this end, they shall not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of, [the partner or other non-Federal entity with whom NRCS is entering into the MOU] or any member [entity]. They also shall not assist [the entity], or any member [entity] with efforts to lobby Congress, or to raise money through fundraising efforts. Further, NRCS employees shall report to their immediate supervisor any negotiations with [entity], or any member [entity], concerning future employment and shall refrain from participation in efforts regarding such party until approved by the Agency.

### **Example of how to Adapt the Required Provision to a Specific Situation**

Employees of NRCS shall participate in efforts under this agreement solely as representatives of the United States. To this end, they shall not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of, National Association of Resource Conservation and Development Councils (NARC&DC), or any member RC&DCs. They also shall not assist NARC&DC, or any member RC&DCs with efforts to lobby Congress, or to raise money through fundraising efforts. Further, NRCS employees shall report to their immediate supervisor any negotiations with NARC&DC, or any member RC&DC, concerning future employment and shall refrain from participation in efforts regarding such party until approved by the Agency.

## 610.96 Template - Designation of Agency Liaison

FROM: Senior Official

TO: Subordinate Official

THROUGH:

SUBJECT: Appointment as Agency Liaison with \_\_\_\_\_ Association

By this memorandum, you are hereby designated to serve as Agency Liaison with the \_\_\_\_\_ Association (Association). Your designation as Agency Liaison is for the purpose(s) of \_\_\_\_\_.

During your service as Agency Liaison, you are, at all times, to act as a representative solely of the interests of the Agency and the United States; you shall not (1) serve as an officer, board member, or employee, or (2) act as agent or representative, of the Association. Your service as Agency Liaison is to conform to the requirements of 18 U.S.C. 201–209 and to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. part 2635. Specifically, during your tenure as Agency Liaison with the Association, you shall not—

- Vote on matters before the Association Board of Directors;
- Serve on committees or task groups unrelated to the above-stated purpose for your service as Agency Liaison.
- Participate in issues related solely to the business or internal interests of the Association (finances, fundraising, membership, etc.);
- Engage in lobbying efforts or representation of the Association's interests before the Federal Government. [NOTE: This does not preclude you from presenting to the Agency the positions or views of the Association on matters directly related to the interests of the Agency being served through your service as Agency Liaison.]
- Actively participate in Association activities in your personal capacity unless you receive written clearance from me to do so. [NOTE: If you are a member, you may retain your membership; you must, however, refrain from active participation (fundraising, holding office or board membership, employment, committee activities, lobbying, etc.)]

\_\_\_\_\_  
I, \_\_\_\_\_, certify that I have read and understand the foregoing and that I agree to abide by the aforementioned requirements and conditions.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

## 610.97 Proposal Reviewer – Conflict of Interests and Confidentiality Statement

### Natural Resources Conservation Service

#### Proposal Reviewer Conflict of Interests and Confidentiality Statement

##### 1. Potential Conflicts of Interest.

You will be asked to review applicant proposals. You must be aware of the potential for conflicts of interest or apparent loss of impartiality that may arise and require your recusal. You would likely have a conflict of interest if you, a family member or an organization with which you are affiliated submits an application or is a sub-grantee or is one of their employees or suppliers. Other relationships may also trigger the disqualification requirement. See the list of affiliations and relationships that may trigger a conflict of interest or the apparent loss of impartiality on the back of this form. If you have a potential conflict with one or more, you must recuse yourself and promptly notify the Responsible Official. [A Responsible Official with conflicting interests must notify the Signatory Official.] The Responsible Official will contact the NRCS Ethics Office to determine how the matter should be handled and tell you what further steps, if any, to take.

##### 2. No use of Insider Information.

You will have access to information not generally available to the public. You must not use that information for your personal benefit or make it available for the benefit of any other individual or organization. [This is to be distinguished from the entirely appropriate general benefit of learning more about USDA and NRCS, learning from other panel members, or becoming better acquainted with the state of a given discipline.]

##### 3. Obligation to Maintain the Confidentiality of Proposals and Applicants.

You will be privy to confidential and proprietary information. NRCS receives proposals in confidence and protects the confidentiality of their contents. Unauthorized use of privileged information, ideas or unique methods is prohibited. For this reason, you must not copy, quote, or otherwise use or disclose to anyone any material from any proposal you are asked to review. If you believe a colleague can make a substantial contribution to the review, you must obtain permission from the Responsible Official before disclosing either the contents of the proposal or the name of any applicant. You are required to maintain the confidentiality of information contained within proposals, and you are prohibited from making unauthorized disclosure of confidential information pertaining to any information obtained in the review process. In accepting this assignment, you agree not to (1) disseminate or disclose information to anyone other than members of the panel without the consent of the applicant and the Responsible Official; (2) use the privileged information for purposes other than carrying out the requested review; or (3) discuss the information outside of the review sessions.

##### 4. Confidentiality of the Review Process and Reviewer Names.

NRCS keeps reviews and your identity as a reviewer of specific proposals confidential as much as is practicable. Do not disclose their identities, the relative assessments or rankings of proposals by a review panel, or other details about the review of proposals.

#### Review Board Member Certification

I accept this assignment and agree to act in a manner consistent with this agreement. I understand that failure to disqualify myself if I have conflicting interests, or the unauthorized disclosure of any confidential information could subject me to sanctions.

##### Potential Conflicts.

I have read the list of affiliations and relationships that could reflect a conflict of interest or impartiality question and prevent my participation in matters involving such individuals or institutions. To the best of my knowledge, I have no affiliation or relationship that would prevent me from performing as a reviewer in this matter. I agree to immediately inform the Responsible Official, in writing, if a potential conflict exists or arises during my service. I understand that I must sign and return this Conflict of Interest and Confidentiality Statement to the Responsible Official before I may serve.

##### Confidentiality

I will not divulge or use any confidential information, described above, that I become aware of during my service.

##### Reviewer Identity

I understand that my identity as a reviewer of specific proposals will be kept confidential to the maximum extent possible, except that copies of written reviews that I submit may be sent to investigators without my name, title or affiliation.

Reviewer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Reviewer's Name: \_\_\_\_\_ Employer/Affiliation/Institution \_\_\_\_\_

Name of Subject Grant or Agreement: \_\_\_\_\_



## Contribution Agreements Handbook

**Civil Servant Status:** (*Check one*) Federal Employee ☐ Special Government Employee ☐

### Ethics Summary for Reviewers

You are subject to the criminal conflict of interest statutes at 18 USC 201-209, and the Standards of Ethical Conduct for Employees of the Executive Branch [ 5 CFR Part 2635], whether an employee of NRCS or another Federal agency, or a non-Federal reviewer. NRCS employees should consult the Standards of Ethical Conduct and NRCS General Manual Title 110, Part 405, for applicable ethics regulations. A non-Federal reviewer is considered to be a "Special Government Employee" (SGE) while serving on a review panel. The SGE category was created by Congress as a way to apply a set of conflict of interest restrictions on individuals who provide limited services to the Federal Government. With some exceptions as detailed below, an SGE is subject to most of the Federal ethics laws and regulations that apply to regular employees.

This provides a very general summary of the ethics restrictions applicable to all reviewers (employees and non-Federal reviewers), and highlights areas in which the ethics laws and regulations are limited or narrowed for SGEs. Your careful adherence to the ethics rules should foster public confidence that NRCS review process is not tainted by improper influences.

#### I. DISQUALIFYING INTERESTS

**Financial Interests:** Absent an advance written waiver, a criminal statute prohibits you from participating as a reviewer or having other substantive involvement for the Federal Government regarding a grant or agreement in which you have an interest if the matter will have a direct and predictable effect on your interest or the interest of:

- Your spouse, parent, minor child, member of household, close relative or business partner
- An organization with which you are employed or affiliated as an officer, director, trustee, or partner
- An organization with which you have an arrangement for future employment
- An organization with which you are negotiating for future employment
- An institution with which you have a position, such as adjunct or visiting professor.

**Other Relationships:** You are also to recuse yourself and not participate for the Federal Government as reviewer or other substantive role regarding proposals involving the interests of persons with whom you have certain other affiliations or relationships, such as:

- A close relative
- Where you have an interest or relationship to an applicant, sub-grantee, or their employees or suppliers
- An organization with which you were previously employed within the past 1 year
- An organization or individual with which you have or seek a business, contractual, consultative or other financial relationship
- An organization or individual with which the spouse, parent or dependant child is an employee, officer, director, consultant, contractor or agent
- An organization with which you are "active", e.g. committee chairperson, subcommittee chairperson, fundraiser, or agent.

In addition, you should advise the Responsible Office if you are a member of an applicant organization; or if, to your knowledge, you are a member of the same organization or institution as an applicant. Membership alone, in a professional organization, is generally not disqualifying.

#### II. MISUSE OF POSITION

You must not use or disclose information not generally available to the public.

You must not use your title or position with NRCS for private gain (whether your own or another's).

#### III. REPRESENTATION

A criminal statute prohibits Federal employees from representing another before a Federal agency or officer in connection with any particular matter in which the Federal Government has a direct and substantial interest, whether compensated or not. [See 18 USDA 203 and 205.] These restriction on regular employees apply to particular matters whether they involve specific parties [such as contracts, grants, applications, requests for rulings, litigation or investigations] or are of general applicability [such as policies, rulemaking, proceedings and legislation]. However, these restrictions have limited application to an SGE. They apply to an SGE with respect to particular matters involving specific parties. For example, when applied to a non-Federal reviewer who becomes an SGE, these laws restrict the SGE from representing someone else before any Federal Government official on a matter involving specific parties, if it is the same matter in which the SGE participated as a reviewer. In some cases, they also prohibit your representation of another to a Federal official on a matter actually pending in USDA. The law also prohibits you from accepting direct or indirect compensation for such representation done by others.

#### IV. ACCEPTING GIFTS

While working for NRCS, you cannot accept gifts offered to you because of your NRCS position and you cannot solicit or accept gifts or favors from NRCS grantees, sub-grantees, contractors, suppliers, applicants, or other entities having or seeking business ties with NRCS. Exceptions include the following: benefits resulting from your non-NRCS business or employment activities (or those of your spouse) when it is clear that the benefits have not been offered or enhanced because of your status in the Federal Government status; gifts clearly motivated by familial relationship or personal friendship; and items worth \$20 or less per occasion --up to \$50 a year from any one source. Additional restrictions are at 5 CFR Part 2635, Subparts B and C.

#### V. FOREIGN GOVERNMENTS

## Contribution Agreements Handbook

While working for NRCS, you may not have or accept employment with any foreign government (including a foreign university), or accept any gift from a foreign government or international organization.

User-friendly Internet-based ethics training is available at [www.aglearn.usda.gov](http://www.aglearn.usda.gov)